Top Mistakes To Avoid In An Employee Handbook

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THAT SOUNDS LIKE A LOT OF WORK

LET'S JUST SAY I DID IT INSTEAD
THE PLAYING FIELD IS NOT LEVEL

STATISTICS

- Companies with 100 employees can expect to receive an employment claim once every 3 years
- 56% of employment trials -- plaintiff verdict
- Average award was $640,477
- Median award was $317,000
- 21% experienced an employment claim in past five years
- Average cost of charge/lawsuit was $51,975
- Includes charges that never get filed and early resolved cases (vast majority)

Sources: Advisen spotlight on E rupt, in.com
In a dispute between the employee and a big organization, who would you tend to believe?

- Employee: 88%
- Big Organization: 12%

An important function of juries in America is to send messages to organizations to improve their behavior.

- Yes: 72%
- No: 28%
OVERARCHING PRINCIPLE

Say What You Do

And

Do What You Say

#1
INTRODUCTION SECTIONS

- The flowery language and history about the Company doesn’t matter
- Be careful of unrealistic objectives and mission statements related to employees
- Identify purpose of Handbook and emphasize at-will disclaimer

A WORD ABOUT THIS HANDBOOK

Purpose

The information contained in this Handbook is designed as an advisory guide to assist the Company and our supervisors with the effective management of personnel and is not meant to address every conceivable situation or issue that arises in the workplace. The provisions and guidelines contained in this Handbook are not binding on the Company and may be changed, interpreted, modified, revoked, suspended, terminated, or added to by the Company, in whole or in part, at any time, at the Company’s sole option, and without prior notice to employees. This Handbook, however, cannot anticipate and is not intended to cover every situation which may arise or to create specific policy to be applied in every instance. Instead, this Handbook is intended only to give on-site management general advice concerning personnel decisions. Also, as a basic premise, the Company will comply with all applicable local, state, and federal laws. Since we operate in multiple states, we cannot list every situation where state and local laws and regulations may differ from those listed in this Handbook, but please understand that any practice or policy of the Company will be applied consistent with all applicable laws and regulations. Policies in this Handbook will not be interpreted or enforced in a way that limits an employee’s right to discuss the terms and conditions of employment with other employees and to otherwise engage in activities that are protected by the National Labor Relations Act.

Employment—At-Will

Nothing contained in this Handbook is intended to create, comprise, or define, nor should it be construed to constitute, any type of oral or written employment contract, promise, or guarantee, express or implied, between the Company and any one or all of its employees. Nothing in the Handbook is intended to provide any assurance of continued employment or any guaranty of continuity of benefits or rights. YOU UNDERSTAND THAT YOU ARE AN AT-WILL EMPLOYEE AND NOTHING IN THE EMPLOYEE HANDBOOK OR OTHER DOCUMENTS SHALL BE CONSTRUED TO CHANGE YOUR AT-WILL STATUS OR OTHERWISE CREATE ANY TYPE OF CONTRACTUAL RIGHT.

In the absence of a specific agreement to the contrary, authorized in writing by the President of the Company, employment with and compensation from the Company are for no definite period of time and may be terminated by the Company or the employee at any time, for any reason, with or without cause, and with or without notice. Any written or oral statements or promises to the contrary are hereby expressly disavowed and should not be relied upon by prospective or existing employees.
EEO POLICY

- Identify some of the major protected categories that are covered
- Don’t include categories that are not protected by the law
- Include a separate section on sexual harassment and other types of harassment
- Have a separate sub-heading on ADA and Religious Accommodations
- Emphasize the need to follow Employee Complaint Procedure to report issues
#3

EMPLOYEE COMPLAINT PROCEDURE

- Maintain a separate policy
- Identify the types of issues for which the procedure should be used
  - Don’t just limit to discrimination
- Avoid “talk to your supervisor, manager or any member of management” language
- Identify a specific job position to whom the EE must report complaints
- Train that person on how to respond to complaints
- Create a second layer of reporting
EMPLOYEE COMPLAINT PROCEDURE

All employees should help to assure that we avoid any form of unlawful or inappropriate conduct. If you feel that you have experienced or witnessed (1) harassment, (2) discrimination, (3) improper denial of a request for accommodation, (4) denial of requested leave under the FMLA, ADA, or otherwise, (5) retaliation, (6) violation of any policy of the Company or policy in this Handbook, (7) failure to pay overtime or other violation of the FLSA or wage payment laws, or (8) other unlawful or inappropriate conduct by anyone, including employees, supervisors, coworkers, contractors, subcontractors, vendors, clients, visitors, customers, or agents, you are to notify immediately (preferably in writing within 24 hours) the HR Director. The address and telephone number for the HR Director is (555) 512-1200 and 110 South Main Street, Duluth, GA 30097.

If you are not contacted promptly about your complaint or are not satisfied with the response, you are to re-file it with the HR Director and also send notification of your complaint in writing by certified mail to our President, whose address is 110 South Main Street, Duluth, GA 30097. If you are not comfortable discussing the matter with the HR Director, you are to file your complaint directly with the President. We prohibit unlawful retaliation against anyone who has made a complaint or provides information related to a complaint.
FAMILY AND MEDICAL LEAVE ACT

- Who is covered?
  - ER must have 50 EEs at the facility (or within 75 miles of facility)
  - EE must have worked for the year at the employer
- Provides:
  - 12 weeks of unpaid leave to "eligible employee"
  - Reinstatement to same or equivalent job
- For Qualifying FMLA Leave Circumstances:
  - Birth and care of child;
  - Care for employee’s spouse, child or parent with serious health condition;
  - Employee’s own serious health condition that prevents performance of job duties
  - Service Member Leave
- Employee doesn’t have to formally announce intent to seek FMLA leave
- Can be one block or intermittent leave

FAMILY AND MEDICAL LEAVE ACT POLICY

- Must provide notice about:
  - Eligibility for leave
  - Amount of leave
  - Type of leave
  - Procedure for requesting leave
  - Certification of leave request
  - Responsibilities of EE while on leave
  - Return from leave
- Key:
  - Training your managers on how to spot an issue
FAMILY AND MEDICAL LEAVE ACT

IS THERE A MEDICAL ISSUE THAT INVOLVES THE EE OR THE EE'S FAMILY MEMBER?

WILL THE MEDICAL ISSUE POTENTIALLY IMPACT THE EMPLOYEE'S JOB?

CONTACT HR

#5
STANDARDS OF CONDUCT POLICY

- Must Haves:
  - Language emphasizing the options for discipline
  - Disclaimer on use of a progressive system of discipline
  - NLRA Disclaimer

- Avoid:
  - Use of “verbal warnings”
  - Compensation deductions language
  - Promising a specific discipline for a certain category of offense

EMPLOYMENT LAWSUITS – IT’S ALL ABOUT TERMINATIONS
WHAT DO JURIES BELIEVE ABOUT DISCIPLINARY ACTIONS?

MANAGERS SHOULD BE ABLE TO EXPLAIN THEIR ACTIONS
ER WITH DOCUMENTATION THAT SUPPORTS DISCIPLINARY ACTION IS MORE BELIEVABLE THAN ER WITHOUT DOCUMENTATION

THE ORGANIZATION IS NEGLIGENT IF IT DOES NOT PROPERLY DOCUMENT AN EMPLOYEE’S PERFORMANCE PROBLEMS
TERMINATION MEETING

1. Should the termination be a surprise?
2. Have a witness
3. Don’t tape record
4. State reason for discharge
5. Don’t argue
6. No small talk
7. Be firm, but compassionate
8. Don’t suggest that you don’t agree with the decision
9. Document meeting

#6
TIME-KEEPING POLICY

• Avoid
  • "No Clocking in early/ Clocking out late" language
  • Avoid "Automatic lunch deductions" language
  • "We will not pay overtime unless it is authorized in advance"

• Must Haves
  • EEs must record all time worked, including outside of normal hours (e.g., email and cell use)
  • EEs cannot work "off the clock"
  • Can't clock in for other employees
  • EEs should not work overtime unless authorized in advance
  • Salary deduction safe harbor for exempt employees

• Be aware of Meal and Rest Break Laws

• Be aware of Biometrics Laws

#7
VACATION AND SICK LEAVE POLICIES

• Decide if you want to have separate leave banks
• Identify who is eligible
• Identify when an EE is eligible
• Identify the procedure for requesting use of leave
• Decide whether you want to allow rollover or payouts
• Decide calendar year or anniversary year basis
• No payout upon separation of employment
• **NOTE:** Have to consider how state law impacts these issues
PROTECTING CONFIDENTIAL INFORMATION

1. Contractual Restraints
   a. Post-Employment Restrictive Covenants
      - Non-competition clause
      - Non-solicitation of customers clause
      - Non-solicitation of employees clause
      - Non-disclosure/confidential information clause
   b. Do not belong in EE Handbook
   c. Remember to consider state law

2. Handbook Policy
   a. Cover expectations of the Company on use of C.I.
   b. Preclude EE's from exceeding authorized access

The Company considers its confidential information to be one of its most valuable assets. We all share a common interest in making sure this information is not improperly or accidentally disclosed. As such, employees must carefully protect and must not disclose to any third party any confidential or proprietary information belonging to the Company or its customers, unless expressly authorized or specifically required in the course of performing authorized services for the Company. Such protected information includes, but is not limited to, products of a technical nature, such as computer software, product sources, product descriptions, product prices, and pricing strategies, such as customer lists, customer contact information, employee information, personal information, on-site program and support materials, training material, pricing lists, sales data, financial and marketing data, and any other confidential information. This includes writing, and whether in electronic or other tangible form, concerning the Company’s or its customers’ operations and business.

Misuse of confidential information can include accessing information not directly germane or relevant to your specifically assigned tasks, disclosing, discussing, and/or providing confidential information to any individual not authorized to view or access that data and failing to properly handle, store or dispose of confidential data. An employee is prohibited from accessing any of the Company’s Confidential Information, including over the Company’s networks, servers or devices, to which the employee has not been granted access and employees also should clearly understand that they are prohibited from accessing Confidential Information by exceeding any authorization they have been granted to access any part of the Company’s technology systems, such as networks, servers or drives (this includes accessing any other person’s computer, voicemail, files, or data without approval).

Individuals with access to confidential information should ensure that any materials containing confidential information are stored safely before leaving their work areas each day and that any confidential information on their computer, tablet, FDA or other personal mobile device are protected by use of a reasonably password. In the event that a personal mobile device with confidential information on it is lost or stolen, you must report it immediately to the President of the Company.

Further, upon separation from employment for any reason, employees are required to return all of the Company’s property that is in their control or possession to the Company, including but not limited to, confidential information. This policy specifically requires employees to return all Company property (including electronically stored information) and to remove all such information from any equipment (including personal equipment) outside of the office (e.g., personal residence) or transferred to or stored on personal computers or other electronic storage devices (including FDA) during the course of their employment. Employees should clearly understand that, upon separation from their employment, they are without authorization to access, use or use any such Company property, whether through a Company-sponsored computer or computer network or via a non-Company computer or other electronic storage device. Further, for the avoidance of doubt, this policy also makes clear that no individual is authorized to access the Company’s computer/network system after they are no longer performing services for the Company, unless such post-termination access is expressly authorized in writing by the President of the Company.
TECHNOLOGY RESOURCES POLICY

1. Application

"For purposes of this policy, the Company uses the term "technology resources" to refer generally to all of its computing, network, and electronic resources, such as computers, software, networks, email systems, telephones and cellular phones, instant messages, text data, voicemail systems, fax machines, information on a memory or flash key or card, jump or zip drive or any other type of internal or external removable storage drives and Internet access."

2. Business Use of Technology Resources

"The use of the Company's technology resources is for company business and is to be used for authorized purposes only. These technology resources are established, maintained, and provided by the Company for employees to use for the furtherance of the Company's business and not for personal use. However, the Company acknowledges that some personal use of its technology resources is inevitable and may be necessary at times. Therefore, the Company permits brief and occasional personal use of its technology resources, provided that such personal use is minimal, reasonable, adheres to the requirements in this policy, and does not interfere with the performance of one's job duties. The Company has sole discretion to determine what constitutes reasonable personal use and whether personal use is interfering with the performance of one's job duties."

3. Ownership and Access To Technology Resources

-All of the Company's technology resources, including all data and files stored on or transmitted using the Company's technology resources, are the property of the Company
-Company can access or monitor it at any time and there is no expectation of privacy in what is created, stored, sent or received using the Company's technology resources.
ACKNOWLEDGEMENT AND ARBITRATION AGREEMENT

- Must have Acknowledgment Form
  - Receipt of Employee Handbook
  - Acknowledgment of At-Will Status
  - Must secure signature (electronic is ok)

- Must have Arbitration Agreement
  - Stand-alone conspicuous Section
  - Designate Arbitration Service
  - Use language to cover any dispute at all
  - Employer pays the fees
  - Switch the forum, not the remedies
HOW DO YOU IMPLEMENT A (GOOD) HANDBOOK?

- New Hires - At Orientation
- Current Employees - Messaging is key
- Keep the Acknowledgment in a secure place
- No need for an Acknowledgment to give to the employee
- What happens if an EE refuses to sign?
Thank You For Your Time